ALASKA DISTRICT COUNCIL OF THE ASSEMBLIES OF GOD, INC.

IBLA 71-220 Decided November 22, 1972

Appeal from decision (AA-5727) of Alaska State Office, Bureau of Land Management, rejecting an application for land under the Recreation and Public Purposes Act of 1926, as amended, 43 U.S.C. §§ 869 et seq. (1970).

Affirmed.

Alaska Native Claims Settlement Act--Alaska: Generally--Recreation and Public Purposes Act

Surveyed lots within the St. Paul townsite (Pribilof Islands, Alaska) which were withdrawn from all forms of appropriation under the public land laws by section 11 of the Alaska Native Claims Settlement Act are not subject to disposal under the Recreation and Public Purposes Act, and an application thereunder must be rejected.

Federal Employees and Officers: Authority to Bind Government--Recreation and Public Purposes Act

Where federal governmental employees advised an applicant to apply for land under the Recreation and Public Purposes Act, the Department of the Interior is not bound to grant the application where it is decided that it is improper to do so, as erroneous advice cannot confer any rights not authorized by law.

Administrative Practice--Applications and Entries: Generally--Constitutional Law

The Department of the Interior has no authority to grant an application under the public land laws contrary to a statute of Congress; this Department is not the proper forum to decide whether or not the statute is constitutional.

APPEARANCES: Rev. B. P. Wilson, Superintendent, Alaska District Council of the Assemblies of God, Fairbanks, Alaska.

OPINION BY MRS. THOMPSON

The Alaska District Council of the Assemblies of God, Inc., has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated February 26, 1971, which rejected its application and petition for classification of three lots on St. Paul Island, Alaska, for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. §§ 869 et seq. (1970).

The decision of the Bureau stated that the whole of St. Paul Island was withdrawn as a special reservation and that the Fur Seal Act of 1966, 16 U.S.C. §§ 1151 et seq. (1970), limited conveyances of St. Paul townsite lots to individual natives. It concluded that the applicant cannot qualify to purchase townsite lots under the Fur Seal Act of 1966.

The appellant contends that the three lots are not part of the townsite but, rather, part of the portion reserved by the Department for which it has been granted a special use permit; that appellant is qualified to acquire the three lots in question for recreational and public purposes; that employees of the Bureau of Commercial Fisheries 1/ advised that it could acquire the lots under the Recreation and Public Purposes Act; that denial of patent unconstitutionally discriminates against appellant in that another church holds patent to land on St. Paul Island; and that any limitation of patent solely to natives is an unconstitutionally vague and unreasonable classification.

The decisive question in this case is not, as suggested in the decision below, whether appellant is or is not qualified under the terms of the Fur Seal Act of 1966. Rather, the question relates to the status of the land. Certain withdrawn lands may be disposed of under the Recreation and Public Purposes Act with the consent of the federal, state or local governmental agency for which the lands have been withdrawn, but not lands in any national wildlife refuge or lands set aside or held for the use or benefit of Indians. 43 U.S.C. § 869(c).

The record shows that lots 1, 2, and 3, which appellant seeks are within the St. Paul Townsite, Tract A, Block 20, of U.S. Survey

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1/ By Reorganization Plan No. 4 of 1970, 84 Stat. 2090, all legally vested functions of the Bureau of Commercial Fisheries and those the Secretary of the Interior administered through that Bureau, with exceptions not relevant here, were transferred to the Secretary of Commerce and became the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration. For the purpose of this decision, the reference to Bureau of Commercial Fisheries is retained.

4943, Alaska, which was officially approved August 2, 1968, over a year before appellant filed its application. This survey was undertaken pursuant to the Fur Seal Act of 1966, 16 U.S.C. § 1166 (1970), which authorized the Secretary of the Interior to set apart land on St. Paul Island as a townsite for the natives of the Pribilof Islands and to survey the townsite.

Appellant contends that these lots were excepted from operation of the Fur Seal Act of 1966 because the Bureau of Commercial Fisheries issued it a special use permit in July 7, 1966, later amended, to occupy and use a major part of the lots for a church, parsonage and chapel until June 30, 1976. The special permit, however, is revocable within the discretion of the Director of the Bureau, as clearly provided under the "General Conditions".

Subsequent legislation passed during the pendency of this appeal moots issues regarding the effect of the Fur Seal Act of 1966 upon the land in question and appellant's application. The Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, must now be considered. By section 11 of the Act, 85 Stat. 696, public lands within certain listed native villages, including St. Paul village, were withdrawn from all forms of appropriation under the public land laws. The withdrawal included the lands in each township that enclosed all or part of the native village, and certain other lands. It is apparent that the lots in question here are within this Congressional withdrawal. As the withdrawal expressly pertained to all "forms of appropriation under the public land laws", there can be no appropriation under the Recreation and Public Purposes Act, and the lands are not within any of the categories of withdrawn lands subject to the Recreation and Public Purposes Act. For this reason appellant's application must be rejected, and our affirmance of the decision rejecting the application is on this ground.

Although the above conclusion is determinative, we shall briefly answer several of appellant's contentions because they are relevant to the reason given above as well as to the reason given by the local Bureau office for rejecting the application.

Appellant makes several broad allegations that to deny its application would be unconstitutional in that it would discriminate against it, and would require vague and unreasonable classifications of persons as "natives" of the Pribilof Islands. It is sufficient to say that this Department has no authority to grant an application under the public land laws contrary to a statute of Congress. Furthermore, this Department is not the proper forum to decide whether or not such a statute is constitutional. Masonic Homes of California, 4 IBLA 23, 78 I.D. 312, 316 (1971).

Appellant contends that it was advised by Bureau of Commercial Fisheries employees to acquire these lots under the Recreation and Public Purposes Act, and that such advice in some way requires this Department to grant its application. However, any such advice cannot bind this Department to grant its application. If this Department determines that land is not subject to the Recreation and Public Purposes Act or, in any event, does not classify land for disposition under that Act, an application thereunder must be rejected irrespective of advice to the contrary by employees of this or another federal agency. Erroneous advice of federal governmental employees cannot confer any rights not authorized by law. Cf. Southwest Salt Company, 2 IBLA 81, 78 I.D. 82 (1971); Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed for the reason given.

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Joan B. Thompson, Member

We concur:

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Martin Ritvo, Member

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Douglas E. Henriques, Member